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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re H.M. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

I.E.,

Defendant and Appellant;

H.M. et al.,

Respondents.

D074290

(Super. Ct. No. SJ13273A-C)

APPEAL from findings and orders of the Superior Court of San Diego County,
Michael Popkins, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Kristen M. Ojeil, Deputy County Counsel, for Plaintiff and Respondent.

William Hook, under appointment by the Court of Appeal, for Minors, H.M. and P.M.

Rich Pfeiffer, under appointment by the Court of Appeal, for Minor, E.M.

I.E. appeals orders terminating parental rights to her children, H.M. and P.M., under Welfare and Institutions Code section 366.26.¹ She argues the juvenile court erred when it found that the beneficial parent-child relationship exception did not apply and terminated parental rights. I.E. also contends the juvenile court erred in not appointing separate counsel for her teenaged son, E.M., when an actual conflict arose between his interests and those of his younger siblings. She argues if E.M. had had separate counsel, he could have petitioned the court for visitation with his younger siblings or consideration when determining his siblings' permanency plans. I.E. points out that E.M. was not provided proper notice of, and was not present at, his siblings' section 366.26 hearing. I.E. argues E.M.'s presence at the hearing would have made a determinative difference in its outcome because E.M.'s testimony could have established the sibling relationship exception to termination of parental rights. E.M. joins in I.E.'s brief.

The San Diego County Health and Human Agency (Agency) asserts the juvenile court did not abuse its discretion in finding that the beneficial parent-child relationship did not apply and terminating parental rights. The Agency argues I.E. has forfeited the issue of appointment of separate counsel for E.M. Alternatively, the Agency asserts

¹ Further unspecified statutory references are to the Welfare and Institutions Code.

minors' counsel did not have an actual conflict or if she had a conflict, any error was harmless. H.M. and P.M. join in the Agency's brief.

We conclude there is substantial evidence to support the juvenile court's finding the beneficial parent-child relationship exception did not apply. Assuming, without deciding, that minors' counsel had an actual conflict and the juvenile court should have appointed separate counsel for E.M., we nevertheless conclude there is not a reasonable probability of a different outcome had separate counsel been appointed for E.M. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

I.E. and J.M. are the parents of three children, E.M., H.M., and P.M., now 17, 10, and 6 years old respectively (together, the three children). In May 2016, the Agency detained the three children in protective custody after a safety plan was not effective in protecting them from their parents' chronic alcoholism. The parents became violent when they drank. I.E. had an altercation with a neighbor and was arrested after breaking a window, which injured the neighbor's child. The three children were present during the altercation and reported that their father was also involved. E.M. did not feel safe when his parents were drinking. He was sad and said he was having a difficult time concentrating at school. H.M. said her parents' drinking made her feel scared and uncomfortable.

At the detention hearing, the juvenile court appointed counsel to represent E.M., H.M., and P.M. and act as their guardian ad litem. The three children were adjudicated juvenile court dependents on July 11, 2016.

The social worker placed H.M. and P.M. (together, the children or siblings) in one foster care home and E.M. in another, citing the children's ages and needs as reasons for separating E.M. from his younger siblings. She discussed the importance of facilitating sibling visits with the children's respective caregivers. The social worker said E.M. had a strong bond with his little sister and brother.

E.M.'s caregiver described him as nice, easygoing, and helpful. However, at school, E.M. was defiant and oppositional. The social worker referred E.M. to therapy for an assessment and to address transitional issues. In June 2016, the district attorney charged E.M. with a number of felonies, including assault and a lewd act on a child. He was placed on probation.²

The parents engaged in services and by early October 2016 were having unsupervised visits with their children. At the end of October, I.E. completed a parenting education program and was ready to graduate from a substance abuse program. However, she relapsed while the children were on a home visit. Her substance abuse treatment counselor said I.E. had a pattern of relapsing every few months and fighting with her neighbor. J.M. also relapsed. The social worker reinstated supervised visitation.

The parents' pattern of making some progress in their case plans and then relapsing continued throughout the reunification period. In reports prepared for the 12-month hearing, the social worker said the parents had made sufficient progress to start overnight visits with E.M. in April 2017, and with H.M. and P.M. in May. In June, H.M.

² E.M.'s case continued on the same dependency track as his siblings' cases until November 2017, when his case was separated from theirs at the 18-month review hearing.

reported that her parents were drinking at night and looked "crazy." Their drinking made her feel sad. P.M. said his visits with his parents "went bad" because his father, mother, and brother were drinking beer, and his mother was calling him names. The social worker also received a report that I.E. was drinking and driving to the liquor store with the children in the car. During a telephone call with his mother, E.M. became upset and reported that his mother sounded drunk.

The Agency temporarily discontinued overnight visits and delayed a planned 60-day home visit. I.E. said the children were lying. In July, E.M. informed the social worker that his mother sounded like she had been drinking again and asked if the Agency could provide any additional services to his parents. He wanted them to get better. E.M.'s caregiver said E.M. had become defiant and his placement was at risk. The parents missed visits with their children. In September, while on the telephone with her mother, H.M. told her caregiver that her parents were drunk.

The 18-month review hearing was initially scheduled for November 16, 2017. E.M. was not present in court. The juvenile court expressed surprise and asked whether there was a reason E.M.'s case had been separated from his siblings' cases. County counsel said E.M.'s 18-month review had been heard the previous day in another department because he was on the dual calendar for children who were subject to both dependency and delinquency jurisdiction.

H.M.'s and P.M.'s 18-month review hearing was held on January 22, 2018. The social worker reported that the children had been having unsupervised visits with their parents but the parents had recently relapsed and visits were again supervised. I.E. said

she was drinking because the toll of not having the children in her care was too stressful for her. The social worker said the parents were able to show progress in sobriety but relapsed each time they were close to reunifying with the children. In October, I.E. was arrested for driving under the influence. The parents "disappeared" in November and December and did not visit with the children. The parents cancelled their visits twice in January. I.E. tested positive in January for opioids, codeine, and morphine. The juvenile court terminated reunification services and set a hearing to select a permanency plan for H.M. and P.M.

In March, the Agency placed H.M. and P.M. with a foster family (caregiver) that had provided respite care for the children for almost two years and were interested in adopting them.

The Section 366.26 Hearing

The section 366.26 hearing was scheduled for May 22, 2018. On May 18, the Agency filed an addendum report asking the court to find that proper notice of the section 366.26 hearing was given to the mother, father, caregivers, and counsel for the parties, including minors' counsel, who was representing E.M., H.M. and P.M. The May 22 minute orders state the court attempted to contact the minors' sibling, E.M., telephonically but was unsuccessful. The court proceeded with the hearing.³

The social worker described H.M. and P.M. as happy children who enjoyed spending time with each other, playing with friends, and participating in activities with

³ The section 366.26 hearing and a hearing on I.E.'s petition to return the children to her care were considered together.

their caregiver and her family. H.M. was doing well at school academically and behaviorally. She said she was happy living with her caregiver. P.M.'s behavior had improved. The social worker explained the difference between adoption and guardianship to H.M. and P.M. H.M. responded, "I want to be adopted by my mom, [caregiver]." When asked to draw a safety house, H.M. placed her caregiver inside the house and her parents outside of the house. P.M. did not appear to understand the concepts of adoption and guardianship.

During visits from February through April 2018, the parents were attentive to the children and displayed positive affection and redirection when needed. The parents consistently demonstrated a parental role, showed empathy toward the children, and responded appropriately to their needs. They helped the children with their homework and brought food for them. H.M. called I.E. "mommy" and hugged her. P.M. told his mother he loved her. The children kissed the parents when they were leaving and asked for extra kisses. At one visit, P.M. said to I.E., "Mommy, when I knew about the visit, I got happy." I.E. replied, "Me, too."

H.M. and P.M. had occasional visits with E.M.⁴ They enjoyed visiting with him. The visits appeared to have been suspended for a period of time not clear in the record pending approval of E.M.'s probation officer.

In June, the parents rescheduled a visit with the younger children and then did not telephone or show up for the rescheduled visit. They were invited to P.M.'s kindergarten

⁴ Sibling visits are not described in the social worker's reports.

ceremony but did not attend. I.E. said they were in Mexico for a funeral. I.E. did not attend her graduation from her recovery program in mid-May or her aftercare program on June 6. When the parents did not show up for visitation with the children on June 7, the social worker made an unannounced visit to their home. I.E. and J.M. appeared to be intoxicated. J.M. was holding a can of beer. He was unable to sit without swaying. There was a strong smell of alcohol on I.E.'s breath. When the social worker asked the parents to undergo a substance abuse test, J.M. said that would not make sense because he and I.E. were drunk.

On his own initiative, E.M. contacted a paternal uncle in Mexico (Uncle) to see whether he would be interested in caring for his siblings. Uncle was interested in providing a permanent home for the children and contacted the social worker. Uncle did not have a good relationship with the parents due to their alcohol and drug use. He had not been aware of the children's circumstances. He knew the children because they had lived with their grandfather (Uncle's brother) for an extended time until 2013. Later, Uncle telephoned the social worker to tell her the grandfather had tried to stop the parents from attending a funeral in Mexico because they were drunk. I.E. became angry and started hitting the grandfather. J.M. and the grandfather exchanged punches.

The social worker reported that H.M. and P.M.'s caregivers were willing to adopt the children. Uncle also wanted to adopt the children and was going through the resource family approval process. The caregiver believed it would be best for H.M. and P.M. to be placed with relatives but would adopt them if Uncle's home was not approved. The social worker spoke with the caregiver about the importance of maintaining the children's

relationships with E.M. The caregiver was open to facilitating ongoing contact between the siblings.

The social worker said the parents' unresolved history of substance abuse negatively impacted their ability to safely parent their children. The parents recently relapsed and missed visits. Although at ages nine and six years old, the children had established relationships with their parents, the social worker believed the benefits of the stability, safety, security, and permanence of adoption outweighed any detriment to the children associated with terminating parental rights.

I.E. asked the court to return the children to her care. She testified she now had a support system and was being treated for depression. She was committed to her sobriety. Her husband worked 14 hours a day and attended his program. They tried to telephone the children every day. I.E. opposed the children's placement with Uncle in Mexico. She had known the children's current caregiver for two years and they were like family.

I.E. and J.M. argued the parent-child beneficial relationship and the sibling bond exceptions applied and a permanency plan other than adoption should be selected for H.M. and P.M. Minors' counsel told the court that the three children shared a sibling bond, saying "[H.M. and P.M.] want to visit with [E.M.] and he wants to visit with them." Their caregiver was open to facilitating sibling visits. Minors' counsel asked the court to find that sibling visitation should occur and order the Agency to set up a meeting with the caregiver to discuss a postadoption sibling contract.

The juvenile court found that H.M. and P.M. were adoptable and there were no exceptions to termination of parental rights. The parents' relationships with the children

were more friendly than parental in nature. The court found that there was a sibling bond but it did not outweigh the benefits the children would gain from adoption. The court said sibling visitation should occur and ordered the Agency to convene a meeting to discuss a postadoption sibling contract.

Appellate Proceedings

After I.E. filed her opening brief alleging minors' counsel had an actual conflict of interest in representing the three children, the Agency filed a motion for appointment of separate appellate counsel for E.M. This court appointed appellate counsel for E.M. and separate appellate counsel for H.M. and P.M. In addition to his respondent's brief in this matter, E.M. filed a related petition for writ of habeas corpus challenging the order terminating parental rights for ineffective assistance of counsel. We ordered the petition for writ of habeas corpus to be considered with this appeal.

DISCUSSION

I

The Beneficial Parent-Child Relationship Exception to Termination of Parental Rights

A

Legal Principles and Standard of Review

As relevant here, to provide stable, permanent homes for dependent children, section 366.26, subdivision (b) requires the juvenile court to select a permanency plan for a child in the following order of preference: termination of parental rights and placement

for adoption, appointment of a nonrelative legal guardian, or continued foster care.⁵ (§ 366.26, subd. (b).) (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 593-594.) If a child is adoptable, there is a strong preference for adoption over the alternative permanency plans. (*San Diego County Dept. of Social Services v. Superior Court* (1996) 13 Cal.4th 882, 888.) If the court determines that a child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1343-1345.)

An exception to termination of parental rights applies where "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) "Evidence of 'frequent and loving contact' is not sufficient to establish the existence of a beneficial parental relationship." (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1315-1316.) " '[B]enefit from continuing the . . . relationship' " means the parent-child relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*)). "If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child

⁵ Other permanency plans such as tribal customary adoption, legal guardianship with a relative with whom the child is currently residing, and permanent placement with a fit and willing relative were not available under the circumstances of this case. (See § 366.26, subd. (b).)

would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Ibid.*)

"We apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)

B

Substantial Evidence Supports the Court's Finding the Beneficial Parent-Child Relationship Exception Does Not Apply

I.E. contends the juvenile court erred when it determined the beneficial parent-child relationship exception did not apply and terminated parental rights.⁶ She argues the evidence clearly showed she and the children shared strong parent-child relationships and bonds and the children looked forward to seeing her. In support of her argument, I.E. cites the many positive reported interactions she had with H.M. and P.M. She asserts the undisputed evidence shows she demonstrated a parental role, was empathetic with the children, and responded appropriately to their needs. I.E. says her maternal relationships with H.M. and P.M. were firmly established because she had cared for them for many years.

The record shows that H.M. and P.M. knew I.E. as their mother and loved her. When I.E. was sober, she was a loving and attentive parent to her children. I.E. did not maintain her sobriety. The record shows that throughout the reunification period, when

⁶ Because J.M. does not appeal the termination of his parental rights, we limit our discussion to the children's relationships with I.E.

I.E. relapsed, her children were no longer her priority. She missed visits. Her drinking affected the children. H.M. felt sad. P.M. said his visits with his parents "went bad" and his mother was calling him names. I.E. accused her children of lying. In May 2017, the social worker received a report that I.E. was drinking and driving to the liquor store with the children in the car. In October 2017, I.E. was arrested for driving under the influence. She "disappeared" from her children's lives from November 2017 to mid-January 2018.

From February 2018 to approximately the end of May, the children had friendly and happy visits with their parents. This portion of the record supports I.E.'s assertion that her interactions with her children were parental in nature and she responded appropriately to their needs. However, I.E. relapsed again in early June. She missed visits and did not attend a significant event in P.M.'s life. I.E. became intoxicated at a funeral and was physically aggressive with a family member. The social worker stated the parents were not able to demonstrate their ability to provide a safe home and put their children's needs ahead of their own.

The record shows that I.E.'s visitation was only periodically consistent. She was unable to control her drinking, which had a negative impact on her children and subjected them to distress and uncertainty. By drinking and driving, I.E. exposed the children to the possibility of physical harm or death. Thus, there is substantial evidence in the record to support the findings the children did not have beneficial relationships with their parents and to the extent they derived some benefit from those relationships, the continuation of the parent-child relationships did not promote the children's well-being to

such a degree as to outweigh the well-being the children would gain from adoption.

(*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

When a child is adoptable, there is a strong preference for adoption over less secure and stable permanent plans. (*In re J.C.* (2014) 226 Cal.App.4th 503, 528; *Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 251.) We conclude that the juvenile court did not err in determining H.M. and P.M. would greatly benefit from the security of a stable, permanent home with committed, capable adoptive parents. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) The children's relationships with I.E. were inconsistent and often distressful, with a substantial possibility of physical harm during visitation. H.M. and P.M. were happy and doing well with their caregiver. Thus, the record supports the finding the children will not be greatly harmed by termination of parental rights.

(§ 366.26, subd. (c)(1)(B)(i); *Autumn H.*, at p. 575.)

II

Appointment of Separate Minor's Counsel for E.M.

A

The Parties' Arguments

I.E. contends minors' counsel had an actual conflict at the section 366.26 hearing in advocating for termination of parental rights in H.M.'s and P.M.'s cases and disregarding E.M.'s interests in protecting his bonded relationships with his younger siblings. I.E. contends the juvenile court had an obligation to appoint separate counsel for the children and E.M. She points out that E.M. did not receive proper notice of the proceedings. I.E. contends the errors were prejudicial because had E.M. been represented

by separate counsel at the section 366.26 hearing, his testimony could have established the sibling bond exception to termination of parental rights.

E.M. asserts the extent of the sibling bond was not fully known because he was not present at his siblings' hearing. He contends counsel advocated against his interests without his written consent. E.M. agrees he was not provided notice of his siblings' section 366.26 hearing as required by section 294 but acknowledges he had actual notice of the proceedings. E.M. also alleges counsel did not pursue his interests in placement with Uncle.⁷

The Agency asserts I.E. has forfeited the issue of appointment of separate counsel for E.M. and the lack of proper notice to E.M. To the extent I.E. did not forfeit the issues on appeal, the Agency argues minors' counsel did not have an actual conflict. Alternatively, the Agency contends any possible error was harmless because I.E. does not appeal the court's finding the sibling bond exception did not apply and minors' counsel conveyed E.M.'s wishes for continued contact with his siblings to the court.

B

Legal Principles and Standard of Review

In California, "counsel for minors routinely serve in a dual role, as both the child's legal counsel and the child's [CAPTA] guardian ad litem." (*In re Kristen B.* (2008) 163 Cal.App.4th 1535, 1541-1542; §§ 317, 326.5; Cal. Rules of Court, rules 5.660,

⁷ E.M.'s contention that counsel did not pursue his interests in placement with Uncle is not supported by the record. The record shows E.M. contacted Uncle on behalf of his siblings, not himself. Further, the Agency, despite I.E.'s opposition, was conducting an evaluation of Uncle's home at the time of the section 366.26 hearing and the issue of placement, or permanent placement, with a relative was not before the court at that time.

5.662.)⁸ The general duties and responsibilities of a CAPTA guardian ad litem are to obtain firsthand a clear understanding of the situation and needs of the child and to make recommendations to the court concerning the best interest of the child as appropriate. (Rule 5.662(d).) An attorney appointed to represent the child has a legal and ethical obligation to represent the child's interests. (*In re Josiah Z.* (2005) 36 Cal.4th 664, 675-677; *In re Alexandria P.* (2016) 1 Cal.App.5th 331, 358.) A "primary responsibility" of minor's counsel "is to advocate for the protection, safety, and physical and emotional well-being of the child." (§ 317, subd. (c).)

An attorney appointed as a CAPTA guardian ad litem " 'advocates for the protection and safety of the child, investigates, participates in presenting evidence to the court, advises the court of the child's wishes, and investigates interests of the child beyond the dependency. (§ 317, subds. (c), (e).) These functions are both more and less than a traditional guardian ad litem in an adversarial proceeding, but are precisely those necessary to provide an independent voice for the child.' " (*In re Nicole H.* (2011) 201 Cal.App.4th 388, 398.)

"The court should initially appoint a single attorney to represent all siblings in a dependency matter unless there is an actual conflict of interest or a reasonable likelihood that an actual conflict of interest will arise. (*In re Celine R.* (2003) 31 Cal.4th 45, 58 [*Celine R.*].) After the initial appointment, the court should relieve an attorney from representation of multiple siblings only if an actual conflict of interest arises. (*Ibid.*)

⁸ Further unspecified rule references are to the California Rules of Court.

Attorneys have a duty to use their best judgment in analyzing whether, under the particular facts of the case, it is necessary to decline appointment or request withdrawal from appointment due to a purported conflict of interest." (Advisory Com. com., 23, pt. 2 West's Ann. Codes, Rules of Court (2018 ed.) foll. rule 5.660, p. 787; *In re Barbara R.* (2006) 137 Cal.App.4th 941, 953; see also State Bar Rules Prof. Conduct, rule 1.7.)

"A court should set aside a judgment due to error in not appointing separate counsel for a child or relieving conflicted counsel only if it finds a reasonable probability the outcome would have been different but for the error."⁹ (*Celine R.*, *supra*, 31 Cal.4th at p. 60.)

C

We Decline to Apply Principles of Forfeiture Under These Circumstances

The Agency contends I.E. has forfeited the right to claim error on appeal. Any error in the appointment of counsel for E.M. did not impact I.E.'s ability to have pursued her independent claim that termination of parental rights would be detrimental to the children by substantially interfering with the sibling relationships. I.E. did not subpoena E.M. to testify nor did she object to his absence at the section 366.26 hearing. She did not object at any time during the proceedings to the social worker's failure to describe the visits between the children and E.M. and the nature of the sibling relationships in court reports. I.E. did not seek to cross-examine the social worker or introduce any evidence

⁹ This standard of prejudice also applies to claims of ineffective assistance of counsel. (See *Strickland v. Washington* (1984) 466 U.S. 668, 694 [defendant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different]; *People v. Ledesma* (1987) 43 Cal.3d 171, 217-218; *People v. Montoya* (2007) 149 Cal.App.4th 1139, 1147.)

concerning the nature of the sibling bonds at the section 366.26 hearing. Although she testified at the hearing, she did not testify about her own observations of the children's relationships with E.M.

Nevertheless, we do not apply principles of forfeiture in view of *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, which held that no objection is required to raise the issue of attorney conflict of interest on appeal as long as the court knew, or reasonably should have known, of the possibility of a conflict of interest. (*Id.* at p. 563 [abrogated on another point by *In re Tabitha W.* (2006) 143 Cal.App.4th 811].) Although *Elizabeth M.* deemed the issue cognizable on appeal as to the children, who had also raised the issue of attorney conflict on appeal, E.M. was not present at the section 366.26 hearing and arguably did not have the opportunity to file an appeal from that hearing.¹⁰ (*Ibid.*) E.M. raised the issue in a petition for writ of habeas corpus shortly after he was appointed separate appellate counsel; we therefore do not apply forfeiture here.

D

Assuming Error, There Is No Reasonable Probability the Court Would Have Determined the Sibling Bond Relationship Applied

To prove the sibling bond relationship exception, the parent must show that termination of parental rights would cause "substantial interference with a child's sibling relationship, taking into consideration the nature and extent of the relationship."

(§ 366.26, subd. (c)(1)(B)(v).) In determining the nature of the sibling bond, the court

¹⁰ Filing an appeal on E.M.'s behalf by minors' counsel may have delayed permanency for H.M. and P.M., thereby raising the possibility of an actual conflict of interest for minors' counsel.

must consider, but is not limited to, the following factors: " 'Whether the child was raised with a sibling in the same home[;] whether the child shared significant common experiences *or* has existing close and strong bonds with a sibling[;] and whether ongoing contact is in the child's best interest, including the child's long-term emotional interest, as compared to the benefit of legal permanence through adoption.' " (*Ibid.*; *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007-1008, italics added.) The application of the sibling bond relationship exception, especially where it concerns young children, will be rare. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 950; *Valerie A.*, at p. 1014.)

Assuming, without deciding, that an actual conflict arose between E.M. and his younger siblings at the section 366.26 hearing, requiring the appointment of separate counsel for E.M., I.E. does not show there is a reasonable probability the outcome of the hearing would have been different if E.M. had separate counsel and was present at his siblings' section 366.26 hearing.

The record clearly shows E.M. was not provided with proper notice of his siblings' section 366.26 hearing. (§ 294, subd. (a)(4).) He acknowledges he had actual notice of the proceedings.¹¹ However, as I.E. points out, the purpose of notice to a sibling under section 294, subdivision (a)(4) is to ensure that the sibling is "apprised of an upcoming hearing under section 366.26 and [has] the opportunity to request the right to participate by means of a petition under section 388, subdivision (b)." (*In re Hector A.* (2005) 125 Cal.App.4th 783, 796 [rejecting claim sibling was entitled to participate in the child's

¹¹ E.M. states he asked to attend the hearing but had a scheduling conflict. He was present when the court tried to secure his presence at the hearing by telephone, but the connection was dropped.

366.26 hearing without filing a section 388 petition].) Under section 388, subdivision (b), a minor sibling "may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child."

Notwithstanding minors' counsel failure to file a section 388 petition on E.M.'s behalf¹² or object to proceeding with the section 366.26 hearing in his absence, minors' counsel informed the court that the children and E.M. shared a sibling bond, asked the court to find that sibling visitation should occur, and petitioned the court for an order requiring the Agency to convene a meeting to decide whether to voluntarily execute a postadoption sibling contract agreement. (§ 16002, subd. (e)(3)(C).)

In making its ruling, the juvenile court found that the three children shared a bond and sibling visitation should occur, and ordered the Agency to convene a meeting to discuss a postadoption sibling contract agreement.¹³ Thus, the only issue that posed a potential conflict for minors' counsel at the section 366.26 hearing was whether the court should select another permanent plan for the children because termination of parental rights would substantially interfere with their bonded sibling relationships with E.M.

¹² E.M. may file a section 388 petition for placement with or near H.M. or P.M., or consideration when implementing a permanent plan for them, or make any other request for an order which may be shown to be in their best interests. (§ 388, subd. (b).)

¹³ We assume the juvenile court will ensure that E.M. has notice of, and independent legal representation at, the meeting to discuss a postadoption sibling contract agreement pursuant to section 16002, subdivision (e)(3)(D) [counsel to the child and counsel to the siblings who are dependents of the court shall be notified of, and may attend, both the meeting and the hearing] described in this paragraph.

We conclude it is not reasonably probable the outcome of the section 366.26 hearing would have been different if E.M. had separate counsel and had testified at his siblings' section 366.26 hearing. The court found that E.M., H.M., and P.M. shared a sibling bond. Significantly, E.M.'s testimony would not have altered that finding or the practicalities of the circumstances of the three children. H.M. and P.M. are young children who need a permanent home that is not only free from the negative effects of substance abuse but is also stable, secure, and safe, with consistently loving and protective parents. E.M. will be 18 in a year. The record, although not entirely clear, indicates E.M. was on probation and living in a group home. He was not able to be physically present in court on the date of the children's section 366.26 hearing for reasons related to his conditions of probation. The record leaves no doubt that E.M. loves and cares deeply for his younger sister and brother and has the ability to promote their interests ahead of his own. The record also indicates that E.M.'s choices and circumstances interfered with his ability to visit his siblings.

In view of the children's needs for safety, security, and stability in a permanent home, E.M.'s restricted circumstances, and their age differences, the juvenile court reasonably found the children's best interests in ongoing contact with E.M. was outweighed by the benefit they would gain by the legal permanence of adoption. H.M. and P.M. were happy living with their caregiver and wanted to stay with her. They also wanted to visit E.M. The caregiver understood the importance of maintaining the children's relationships with E.M. and was willing to facilitate ongoing sibling visits. The juvenile court could draw the reasonable inference the consequences of E.M.'s own

decisions might interfere with his sibling relationships more than would termination of parental rights. Thus, there was no showing that termination of parental rights would be detrimental to the children by substantially interfering with their relationships with E.M.

DISPOSITION

The findings and orders terminating parental rights are affirmed.

McCONNELL, P. J.

WE CONCUR:

HUFFMAN, J.

HALLER, J.